

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of)
)
Petition of Cinergy Communications)
Company For Designation as an Eligible) PSC Case 2004-00181
Telecommunications Carrier in the)
Commonwealth of Kentucky)

PETITION OF CINERGY COMMUNICATIONS COMPANY FOR
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS
CARRIER IN THE COMMONWEALTH OF KENTUCKY

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April 8 2004

TABLE OF CONTENTS

	<u>Page</u>
I. CINERGY COMMUNICATIONS' UNIVERSAL SERVICE OFFERING.....	3
II. CINERGY COMMUNICATIONS SATISFIES ALL OF THE REQUIREMENTS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	4
A. Cinergy Communications Offers Each of the Services Supported By the Federal High-Cost Universal Service Program.....	5
1. Voice-Grade Access To The Public Switched Network.....	6
2. Local Usage.....	7
3. Dual-Tone Multi-Frequency ("DTMF") Signaling, or its Functional Equivalent.....	7
4. Single-Party Service Or Its Functional Equivalent.....	7
5. Access to Emergency Services.....	7
6. Access to Operator Services.....	8
7. Access to Interexchange Service.....	8
8. Access to Directory Assistance.....	8
9. Toll Limitation for Qualifying Low-Income Consumers. .	9
B. Cinergy Communications Offers Supported Services Over Its Own Facilities.....	9
C. Cinergy Communications Will Advertise Its Universal Service Offering.....	11
III. CINERGY COMMUNICATIONS REQUESTS DESIGNATION THROUGHOUT THE BELLSOUTH SERVICE AREA IN KENTUCKY ¹²	
IV. GRANTING THIS PETITION WILL SERVE THE PUBLIC INTEREST.....	12
A. As BellSouth is a Non-Rural ILEC, There is No Need to Conduct a Public Interest Analysis.....	12
B. Grant of Cinergy Communications' Petition is in the Public Interest.....	13
C. Expeditious Grant of This Application is In the Public Interest.....	14
V. HIGH COST CERTIFICATION.....	15
VI. ANTI-DRUG ABUSE CERTIFICATION.....	15
CONCLUSION.....	16

SUMMARY

Cinergy Communications Company (“CCC”) is seeking designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Act”), throughout the service area of BellSouth, a non-rural ILEC, in Kentucky. As demonstrated below, CCC satisfies the prerequisites for ETC designation set forth in the Section 214 of the Act and in Part 54 of the FCC’s Rules, and CCC’s designation will serve the public interest.

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PUBLIC SERVICE
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In the Matter of)
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Petition of Cinergy Communications)
Company For Designation as an Eligible) PSC Case 2004-00131
Telecommunications Carrier in the)
Commonwealth of Kentucky)

PETITION OF CINERGY COMMUNICATIONS COMPANY FOR
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN
THE COMMONWEALTH OF KENTUCKY

Cinergy Communications Company (“CCC”), by its undersigned
counsel and pursuant to Section 214(e)(2) of the Communications Act of 1934, as
amended (the “Act”), hereby submits this Petition for Designation (“Petition”) as an
Eligible Telecommunications Carrier (“ETC”) throughout its licensed service area in
the State of Kentucky. CCC seeks designation as an ETC for the wire centers of
BellSouth, a non-rural incumbent LEC. As demonstrated below, CCC meets all of
the requirements for designation as an ETC and CCC’s designation will serve the
public interest. As the Commission has found, designating competitive carriers like
CCC as ETCs “will benefit consumers in rural areas of [] Kentucky by expanding
the range of competitive choices and by providing an incentive for incumbent
telephone companies to improve their existing networks.” ^{1/}

^{1/} *Petition of SouthEast Telephone, Inc. for Designation as an Eligible Telecommunications
Carrier, Order, Case No. 2002-00080 (Ky. PSC Sept. 17, 2002) (SouthEast ETC Order) at 3; see
also e-Tel LLC for Designation as an Eligible Telecommunications Carrier, Order, Case No.
2002-00323 (Ky. PSC Nov. 26, 2002) (“e-Tel ETC Order”) at 2.*

I. CINERGY COMMUNICATIONS' UNIVERSAL SERVICE OFFERING.

CCC is a competitive local exchange carrier ("CLEC") headquartered in Evansville, Indiana that offers a complete line of communications services and products to both business and residential customers in Indiana, Kentucky, Tennessee and Ohio. CCC's offerings include local service, long distance, broadband, Internet access, web hosting and telephone equipment. Cinergy Corporation, one of the nation's leading diversified energy companies, currently owns a 32% share of the equity of CCC's holding company QComm Corporation. Cinergy Corp. licenses the name "Cinergy" to QComm but does not exercise any managerial control over the company.

The Commission has authorized CCC to provide competitive local exchange services (Utility ID No. 22213700), intrastate interexchange service (Utility ID No. 13700) and operator services (Utility ID No. 33313700) throughout Kentucky. CCC intends to obtain high-cost universal service support funding throughout its licensed service area, including areas served by BellSouth, to speed the delivery of communications services to the citizens of Kentucky. CCC is a common carrier, consistent with the definition in 47 U.S.C. § 153(10) and the requirements of 47 U.S.C. § 214(e)(1).

CCC currently provides all the services and functionalities supported by the federal universal service program set forth in Section 54.101(a) of the Federal Communications Commission's ("FCC's") rules throughout its service area in Kentucky. CCC will provide universal service to its consumers using a

combination of the unbundled network element (“UNE”) platform (“UNE-P”), CCC’s own Class V switches utilizing UNE loops, and CCC’s own wireline facilities, as well as through the resale of BellSouth’s local exchange service pursuant to Section 251(c)(4) of the federal Act. Designation of CCC as an ETC will benefit Kentucky consumers by promoting CCC’s ability to construct and improve network facilities, facilitating local competition on a level playing field in rural areas of the state, and giving ILECs incentives to improve their facilities and provide higher quality service due to the beneficial pressure of competition.

II. CINERGY COMMUNICATIONS SATISFIES ALL OF THE REQUIREMENTS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

The legal standards governing ETC designation proceedings are found in Section 214(e) of the federal Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 214(e); the FCC’s rules, principally 47 C.F.R. §§ 54.101 and 54.201; and the governing precedents of the federal courts and the FCC. Section 214(e) includes three requirements: a prospective ETC must show that, upon receiving designation, it will: (1) provide supported services throughout the service area for which it is designated, (2) do so using its own facilities (including unbundled network elements (“UNEs”)) and/or a combination of its own facilities and resale of another carrier’s facilities; and (3) advertise the availability of these offerings through the media. 47 U.S.C. § 214(e)(1)(A) and (B). The “supported services” are listed in 47 C.F.R.

§ 54.101(a).^{2/} Finally, when a carrier seeks ETC designation in an area served by a “rural telephone company” as defined in the Act, the Commission must find that the designation of an additional telephone company is in the public interest.^{3/} CCC satisfies each of the elements required for ETC designation pursuant to Section 214(e) of the Act.

A. Cinergy Communications Offers Each of the Services Supported By the Federal High-Cost Universal Service Program.

CCC currently provides (or will provide upon ETC designation) all the services and functionalities supported by the federal universal service program, as set forth in Section 214(e) of the Act and Section 54.101(a) of the FCC’s rules, on 100% of the lines it serves, throughout the BellSouth service area in Kentucky, the area for which it seeks ETC designation.

In order to be designated as an ETC, a carrier must be a common carrier and both offer and advertise the supported services throughout the designated service area. 47 U.S.C. § 214(e)(1). The FCC has identified the following services and functionalities as the core services to be offered by an ETC and supported by federal universal service support mechanisms:

1. Voice-grade access to the public switched telephone network;
2. Local usage;

^{2/} See *infra* Section II.A.

^{3/} 47 U.S.C. § 214(e)(2); see also 47 U.S.C. § 153(37) (definition of “rural telephone company”). However, this requirement does not apply to Cinergy’s instant petition, as the company is seeking ETC designation in the service area of BellSouth, a non-rural ILEC.

3. Dual-tone, multi-frequency (“DTMF”) signaling, or its functional equivalent;
4. Single-party service or its functional equivalent;
5. Access to emergency services;
6. Access to operator services;
7. Access to interexchange service;
8. Access to directory assistance; and
9. Toll limitation for qualifying low-income consumers.

For purposes of ETC applications, carriers must certify that they provide each of the supported services, or where appropriate, its functional equivalent.^{4/} As shown below and in the Declaration attached as Exhibit A hereto, CCC currently provides, or will provide upon designation, each of the required services and functionalities on 100% of the lines it serves, throughout the area for which it seeks designation.

1. Voice-Grade Access To The Public Switched Network.

The FCC has concluded that voice-grade access means the ability to make and receive phone calls, within a specified bandwidth and frequency range.^{5/} CCC meets this requirement by providing voice-grade access to the public switched telephone network. Through its interconnection arrangements with BellSouth and

^{4/} See 47 C.F.R. § 54.101.

^{5/} Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776 at 8810-11 (1997) (“*First Report and Order*”).

other local exchange carriers, each of CCC's customers are able to make and receive calls on the public switched telephone network within the specified bandwidth.

2. Local Usage.

ETCs must include local usage beyond providing simple access to the public switched network as part of a universal service offering. CCC includes unlimited local usage in each of its local service rate plans, and thereby complies with the requirement that all ETCs offer local usage.

3. Dual-Tone Multi-Frequency ("DTMF") Signaling, or its Functional Equivalent.

DTMF is a method of signaling that facilitates the transportation of call-set up and call detail information. ^{6/} CCC provides DTMF signaling consistent with the rules.

4. Single-Party Service Or Its Functional Equivalent.

"Single-party service" means that only one party will be served by a subscriber loop or access line (in contrast to a multi-party line). ^{7/} CCC meets the requirement by providing single-party service throughout its service area.

5. Access to Emergency Services.

The ability to reach a public emergency service provider by dialing 911 is required in any universal service offering. CCC currently provides its subscribers

^{6/} 47 C.F.R. § 54.101(a)(3).

^{7/} *First Report and Order*, 12 FCC Rcd at 8810.

with access to E-911 emergency services in accord with this requirement, and consistent with FCC regulations throughout the service area for which designation is sought.

6. Access to Operator Services.

Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call.^{8/} CCC meets these requirements by providing all of its customers with access to operator services, including customer service and call completion.

7. Access to Interexchange Service.

An ETC must offer consumers access to interexchange service to make and receive toll or interexchange calls. CCC meets this requirement by providing all of its customers with the ability to make and receive interexchange calls, including “equal access” enabling customers to reach their interexchange carrier of choice.

8. Access to Directory Assistance.

The ability to place a call to directory assistance is a required service offering.^{9/} CCC meets this requirement by providing all of its customers with access to directory assistance by dialing “411” or “555-1212”.

^{8/} *First Report and Order*, 12 FCC Rcd at 8817-18.

^{9/} *First Report and Order*, 12 FCC Rcd at 8821.

9. Toll Limitation for Qualifying Low-Income Consumers.

An ETC must offer either “toll control” or “toll blocking” services to qualifying Lifeline customers at no additional charge. 47 C.F.R. § 54.101 (a)(9). CCC currently has no Lifeline customers because only carriers designated as ETCs can participate in the provision of Lifeline service. See 47 C.F.R. §§ 54.400-415. Once designated as an ETC, CCC will participate in Lifeline as required, and will provide toll control and/or toll blocking capability in satisfaction of the Commission’s requirement. CCC currently has the technology to provide toll limitation and will utilize this technology to provide such functionality at no additional charge to Lifeline customers. ^{10/}

B. Cinergy Communications Offers Supported Services Over Its Own Facilities.

A carrier requesting designation must certify that it offers the supported services “either using its own facilities or a combination of its own facilities and resale another carrier’s services.”^{11/} CCC will provide universal service to its consumers using a combination of CCC’s own Class V switches used together with UNE-loops, UNE-P, and resale of BellSouth service. The FCC has made it clear that purchase of UNEs satisfies the facilities requirement, and has specified certain high-cost funding limitations with respect to lines provided using

^{10/} See *Virginia Cellular ETC Order*, ¶ 22.

^{11/} 47 U.S.C. § 214(e)(1)(A).

UNEs. ^{12/} An ETC may satisfy the requirement of providing service using resale, but may not claim universal service funding for resold lines.

The following chart shows a breakdown of the numbers of business and residential loops that CCC serves using various entry strategies: CCC has no way of knowing which and how many of its customers also procure service from other providers, and does not know whether its customers consider its lines to be “primary” or “secondary.”

	UNE-P	UNE-loop with CCC switch	CCC facilities only	Section 251(c)(4) resale	Total
Residential	4,731	0	0	1,060	5,791
Business	13,413	984	0	572	14,969
Total	18,144	984	0	1,632	20,760

As of March 22, 2004, CCC serves 18,144 lines via UNE-P, 984 lines via UNE-loops, 0 lines exclusively via its own facilities, and 1632 lines via Section 251(c)(4) resale.

CCC has invested in two Class V softswitches manufactured by Santera. Our Evansville switch serves western Kentucky and our Louisville switch serves eastern Kentucky. We have also invested in a state of the art Network Operations Center located in Evansville, Indiana. Our local service customers receive long distance services via our DMS 250 switch located in Madisonville,

^{12/} *First Report and Order*, 12 FCC Rcd at ¶¶ 154-68.

Kentucky. In the near future our Santera switches will be able to perform this function and we will be decommissioning the Madisonville switch. CCC has also invested in next generation voice over Internet protocol (“VoIP”) technology which is utilized to provide local service, and we will be using this technology to provide local service throughout Kentucky.

CCC is willing and able to serve all customers throughout the area for which it has requested designation.

C. Cinergy Communications Will Advertise Its Universal Service Offering.

CCC will advertise the availability of the supported services and the corresponding charges in a manner that informs the general public within the designated service area of both the services available and the corresponding charges. CCC advertises its wireline services through several different media of general distribution throughout the service area for which designation is requested, including newspapers, other periodicals, radio, and an Internet web site (<http://www.cinergycom.com>), and will use the same media to advertise its universal service offerings throughout the service area designated by the Commission. CCC also commits that, once it receives ETC designation, it will provide notices of its Lifeline and Link Up discounted services at local unemployment, social security, and welfare offices. ^{13/}

^{13/} *Virginia Cellular ETC Order*, ¶ 25.

III. CINERGY COMMUNICATIONS REQUESTS DESIGNATION THROUGHOUT THE BELL SOUTH SERVICE AREA IN KENTUCKY

CCC requests ETC designation for the entire BellSouth service area in Kentucky as depicted on the map attached hereto as Exhibit B. Pursuant to the Act, a “service area” is a “geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms.” 47 CFR § 54.207(a). For service areas served by non-rural ILECs, there are no restrictions on how a state commission defines the “service area” for purposes of designating a competitive ETC. *Id.*

CCC is not applying for designation as an ETC in an area served by a rural telephone company.

IV. GRANTING THIS PETITION WILL SERVE THE PUBLIC INTEREST.

A. As BellSouth is a Non-Rural ILEC, There is No Need to Conduct a Public Interest Analysis.

CCC notes that BellSouth is not a “rural telephone company” under 47 U.S.C. § 153(37). Section 214(e)(2) of the Act expressly requires that a state commission conduct a public interest analysis “[b]efore designation an additional eligible telecommunications carrier for an area served by a rural telephone company . . .” As CCC is not petitioning for ETC designation in a service area served by a rural telephone company, there is no need for the Commission to determine whether or not designation of CCC is in the “public interest.”

B. Grant of Cinergy Communications' Petition is in the Public Interest.

Nevertheless, if the Commission deems it necessary to conduct a public interest analysis, the Commission should find that designating CCC as an ETC would serve the public interest, as discussed in more detail below. As the Commission has found, designating CLECs as ETCs “will benefit consumers in rural areas of [] Kentucky by expanding the range of competitive choices and by providing an incentive for incumbent telephone companies to improve their existing networks.”^{14/}

The FCC has recognized that “[d]esignation of competitive ETCs promotes competition and benefits consumers in rural high-cost areas by increasing customer choice, innovative services, and new technologies.”^{15/} CCC will implement a variety of service offerings and rate plans that will be both competitive with the incumbent LEC service offerings and affordable to Kentucky’s consumers.

Designating CCC as an ETC will bring to consumers the benefits of competition, including increased choices, higher quality service, and lower rates. In a competitive market, consumers will be able to choose the services that best meet their communications needs. With a choice of service providers, the consumer is able to select a provider based on service quality, service availability and rates. In addition, designating CCC as an ETC will also provide an incentive to the incumbent LEC to improve its existing network in order to remain competitive,

^{14/} *SouthEast Telephone ETC Order* at 3; *e-Tel ETC Order* at 2.

^{15/} *Western Wireless Corporation, DA 00-2896* (released December 26, 2000) (“Wyoming Order”), 16 FCC Rcd 48, 55; affirmed, FCC 01-311 (released October 19, 2001), at ¶ 17.

resulting in improved services to consumers. The FCC has noted that “we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.”¹⁶

Designating CCC as an ETC will have only a negligible impact on the overall universal service high-cost fund. The funds CCC will receive from the Interstate Access Support (“IAS”) fund will have no impact on the overall size of the fund, since the IAS fund is subject to a nationwide hard cap; and the amounts that CCC will receive from the High Cost Model Support fund will have a miniscule impact on the overall \$3.5 billion high-cost universal service fund.

CCC is committed to providing excellent service to its customers. CCC is subject to the regulatory authority of the Commission and complies with applicable consumer protection rules. Moreover, CCC will, as required by Section 214(e) of the Act, use all federal high cost support that it receives for the construction, maintenance and upgrading of facilities used to provide supported service in rural and high-cost areas. Receipt of universal service high-cost funds will enable CCC to accelerate and expand its deployment of wireline network facilities throughout its licensed service area in Kentucky.

C. Expeditious Grant of This Application is In the Public Interest.

The public interest is further served by the expeditious grant of this Petition. The FCC has recognized that “excessive delay in the designation of competing providers may hinder the development of competition and the

^{16/} Guam Cellular and Paging, Inc. DA 02-174, (released January 25, 2002), at ¶ 22.

availability of service in many high-cost areas.”^{17/} CCC requests that this Commission proceed to grant this petition expeditiously.

V. HIGH COST CERTIFICATION.

Under Sections 54.313, 54.314, 54.809, and 54.904 of the Commission’s rules, carriers seeking high cost support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, must self-certify with the FCC and the Universal Service Administrative Company as to their compliance with Section 254(e) of the Act. Therefore, CCC submits its high-cost certification with the Commission as part of this petition (*see Exhibit A*). CCC respectfully requests that the Commission issue a finding that CCC has met the high-cost certification requirement and that CCC is, therefore, entitled to begin receiving high-cost support as of the date it receives a grant of ETC status in order that funding will not be delayed.

VI. ANTI-DRUG ABUSE CERTIFICATION.

CCC certifies that no party to this petition is subject of a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862. (*See Exhibit A*).

^{17/} *Twelfth Report and Order*, 15 FCC Rcd at ¶ 94 (2000).

CONCLUSION

CCC respectfully requests that the Commission designate it as an ETC in Kentucky on an expedited basis.

Respectfully submitted,

CINERGY COMMUNICATIONS COMPANY

By:  _____

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Its Counsel

April 8, 2004

Exhibit A

Affidavit of Robert A. Bye

Robert A. Bye, being first duly sworn upon oath, deposes and states as follows:

1. My name is Robert A. Bye and I serve as Vice President and General Counsel of Cinergy Communications Corp. ("CCC"). My business address is 8829 Bond St., Overland Park, Kansas 66218. I am an authorized representative of CCC with respect to the foregoing Application for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky ("Application").

2. I have read the foregoing Application, and all information therein is true to the best of my knowledge, information, and belief.

3. CCC is a common carrier and provides (or will provide upon designation) all the services and functionalities supported by the federal universal service program, as set forth in Section 214(e) of the Act and Section 54.101(a) of the FCC's rules, throughout the service area for which it seeks ETC designation in Kentucky, *i.e.*, the areas served by BellSouth, depicted in Exhibit B. CCC also advertises the availability of the supported services and the corresponding charges through several different media of general distribution, throughout the service areas for which designation is requested. As an ETC, CCC will also offer a universal service at reduced rates package to subscribers who are eligible for Lifeline and Link-Up support. The manner in which CCC satisfies these requirements is described in greater detail in the Application.

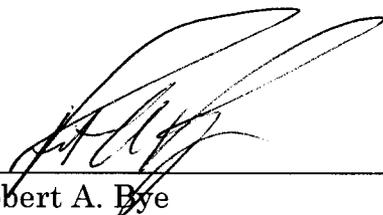
4. A grant of CCC's application will serve the public interest by promoting additional deployment of facilities and services to the high-cost areas served by BellSouth in Kentucky, and bringing consumers in those areas the benefits of additional competitive universal service offerings. Designation of CCC as an ETC will enable CCC to increase its deployment of network facilities that support provision of both basic telecommunications services and higher-bandwidth and enhanced services to consumers in Kentucky.

5. High-Cost Certification. CCC certifies that all high-cost universal service support funding that it receives for Kentucky will be used only for the provision, maintenance, and upgrading of the services and facilities for which the support is intended.

6. Anti-Drug Abuse Certification. To the best of my knowledge, the applicant referred to in the foregoing Application, including all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or non-

voting) of the applicant as specified by Section 1.2002(b) of the FCC's rules, are not subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

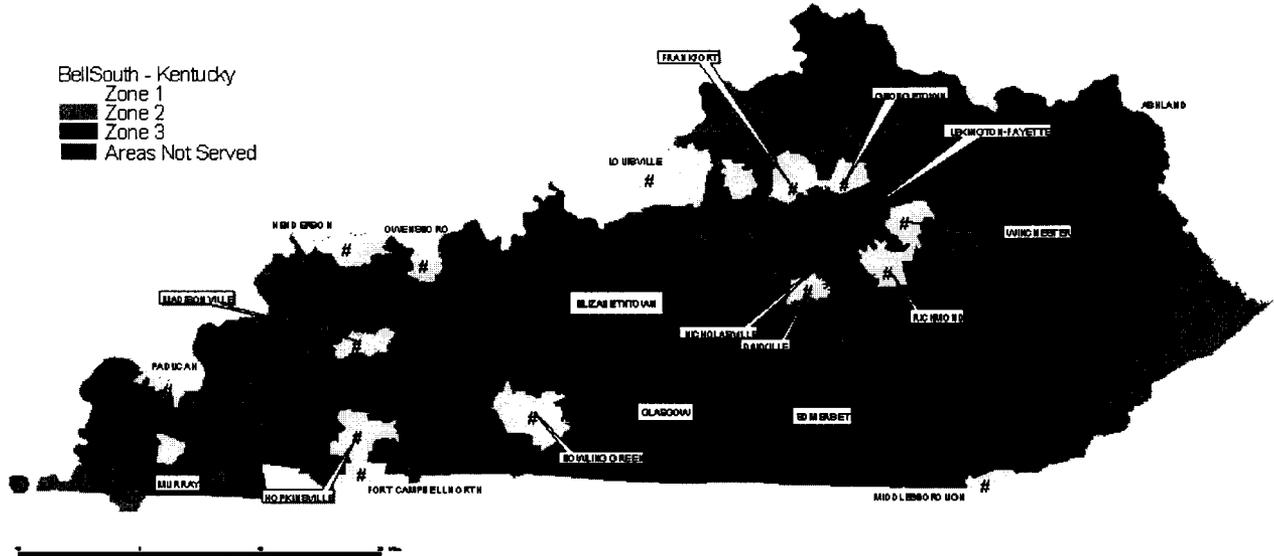
This concludes my affidavit.



Robert A. Bye

Exhibit B

Map of CCC's Proposed Service Area



This image is also available at
<http://www.universalservice.org/hc/maps/Kentucky/BellSouth.html>.